

Regular Session, 2001

ACT No. 158

HOUSE BILL NO. 1557

BY REPRESENTATIVE BOWLER

AN ACT

To enact R.S. 22:737.2 and Part XXV of Chapter of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:1131 through 1151, to amend and reenact R.S. 22:1212(F), and to repeal Part XXIV of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:1111 through 1119, relative to the qualification and license requirements for insurance producers; to provide for unearned premiums; to provide for licensing requirements; to provide for exceptions; to provide for examinations; to provide for renewals; to provide for fees; to provide for penalties; to provide for payment of commissions; to provide for appointments; to provide for the powers of the commissioner of insurance; to provide for reciprocity; to provide for prohibitions; to provide for penalties; to provide for regulations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section R.S. 22:1212(F) is hereby amended and reenacted and R.S. 22:737.2 and Part XXV of Chapter of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:1131 through 1151, are hereby enacted to read as follows:

§737.2. Unearned premium; limitation of claims by insolvent insurers

A. Any claim of an insolvent insurer against an insured or against the agent through whom a policy was written concerning any policy of insurance issued or delivered in this state shall be subject to the following limitations:

(1) The insured shall not be liable to an insolvent insurer for any premium which had not been earned on a pro rata basis on the date the insurer was declared insolvent by a court of competent jurisdiction.

(2) The insured shall be entitled to credit against any obligation owed to the insolvent insurer for any unearned premium which the insured has paid and for which he has not been reimbursed by the Louisiana Insurance Guaranty Association or the Louisiana Life and Health Insurance Guaranty Association.

(3) The agent, through whom the policy was written, shall not be liable to the insolvent insurer for any premiums which had not been earned on a pro rata basis on the date the insurer was declared insolvent. The agent is entitled to retain the commission due on earned premiums. The insured is entitled to any unearned premium which the agent has collected but has not remitted to the insurer.

B. In this Section, the term "insolvent insurer" includes any insurer who has been declared to be insolvent under the laws of any state and its liquidator, rehabilitator, receiver, statutory successor, or other legal representative.

PART XXV. QUALIFICATION AND LICENSE REQUIREMENTS
FOR INSURANCE PRODUCERS

§1131. Purpose and scope

This Part shall govern the qualifications and procedures for the licensing of insurance producers. These provisions shall apply to any and all lines of insurance and types of insurers, including but not limited to life, health, property, liability, credit, title, fire, or marine, operating on a stock, mutual reciprocal, fraternal benefit, hospital, or medical service plan, as set forth in this Part.

§1132. Definitions

As used in this Part, unless the context requires otherwise, the following definitions shall be applicable:

(1) "Authorized insurer" shall mean any type of insurer other than surplus lines or unauthorized insurer.

(2) "Business entity" shall mean a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(3) "Commission" shall mean a fee paid to an insurance producer as a percentage of the premium generated by a sold insurance policy, or direct compensation or reward of a producer when the same is calculated as a flat fee or as a percentage of the premium or on the profit to the principal.

(4) "Home state" shall mean the District of Columbia or any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.

(5) "Insurance" shall mean any of the lines of authority as specified in R.S. 22:1137.

(6) "Insurance producer" shall mean a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, and includes all persons or business entities otherwise referred to in the Louisiana Insurance Code as "insurance agent" or "agent", or "insurance broker" or "broker", or "insurance solicitor" or "solicitor", or "surplus lines broker".

(7) "Insurer" shall have the same definition as set forth in R.S. 22:5.

(8) "License" shall mean a document issued by this state's commissioner of insurance authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier.

(9) "Limited line credit insurance" includes credit life, as defined in R.S. 22:6(16) and R.S. 6:969.6(12), credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the commissioner of insurance determines should be designated a form of limited line credit insurance.

(10) "Limited line credit insurance producer" shall mean an insurance producer who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(11) "Limited lines insurance" is any authority granted by the commissioner of insurance which restricts the authority of the licensee to less than the total authority prescribed in the associated major lines pursuant to R.S. 22:1137(A)(1) through (5).

(12) "Limited lines producer" shall mean an insurance producer authorized by the commissioner of insurance to sell, solicit, or negotiate limited lines insurance.

(13) "NAIC" shall mean the National Association of Insurance Commissioners or its successor.

(14) "Negotiate" shall mean to confer directly with or to offer advice directly to a purchaser, certificate holder, or enrollee, or prospective purchaser, certificate holder, or enrollee, of a particular contract of insurance, including certificates, riders, endorsements, or amendments, concerning any of the benefits, terms, or conditions of the contract, provided that the person engaged in that act is an insurance producer who either sells insurance or obtains insurance from insurers for purchasers, certificate holders, or enrollees.

(15) "Person" shall mean any natural or artificial legal entity including but not limited to individuals, partnerships, associations, trusts, or corporations.

(16) "Sell" shall mean to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

(17) "Solicit" shall mean to attempt to sell insurance or to ask or urge a person to apply for a particular kind of insurance from a particular insurer.

(18) "Surplus lines broker" shall mean an insurance producer who solicits, negotiates, or procures a property and casualty policy with

~~an insurance company not licensed to transact business in the state which cannot be procured from insurers licensed to do business in this state. All transactions entered into under such license shall be subject to R.S. 22:1249 et seq.~~

(19) "Terminate" shall mean to cancel the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

(20) "Uniform Business Entity Application" shall mean the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.

(21) "Uniform application" shall mean the current version of the NAIC Uniform Application for resident and nonresident producer licensing.

§1133. License required

A. No person shall act as or hold himself out to be an insurance producer unless licensed by the Department of Insurance.

B. No insurance producer shall sell, solicit, make an application for, procure, negotiate for, or place for others, any policies for any lines of insurance as to which he is not then qualified and duly licensed in this state.

§1134. Exceptions to licensing; prohibitions

A. Nothing in this Part shall be construed to require an insurer to obtain an insurance producer license. In this Section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.

B. A license as an insurance producer shall not be required of the following:

~~(1) An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state and:~~

~~(a) The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are not the sale, solicitation, or negotiation of insurance;~~

~~(b) The officer, director, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or~~

~~(c) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance.~~

~~(2) A person who secures and furnishes information for the purpose of group life insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans; issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service.~~

~~(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employer's or association's officers, employees, director, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees~~

~~or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employer, association, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts.~~

~~(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation, or negotiation of insurance.~~

~~(5) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of this state, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state.~~

~~(6) A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.~~

~~(7) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of~~

the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission.

(8) Employees of an insurer or of an insurance producer who respond to requests from existing policyholders on existing policies provided that those employees are not directly compensated based on the volume of premiums that may result from these services and provided those employees do not sell, solicit, or negotiate insurance.

C.(1) The Department of Insurance shall not grant, renew, reinstate, or permit to continue any license if the license is being or will be used by the applicant or licensee for the sole purpose of writing controlled business. For purposes of this Part, "controlled business" shall mean either of the following:

(a) Insurance written on the interests of the licensee or those of his immediate family or of his employer.

(b) Insurance covering himself or members of his immediate family, or a corporation, association, or partnership, or the officers, directors, substantial stockholders, partners, or employees of a corporation, association, or partnership, of which he or a member of his immediate family is an officer, director, substantial stockholder, partner, associate, or employee.

(2) Nothing in this Subsection shall apply to insurance written in connection with any credit transactions.

(3) Any license under this Subsection shall be deemed to have been, or intended to be, used for the purpose of writing controlled business, if the Department of Insurance determines that during any twelve-month period the aggregate commissions earned from the controlled business has exceeded twenty-five percent of the aggregate

~~commissions earned on all business written by such applicant or licensee during the same period.~~

~~D. No person shall be licensed as an insurance producer, limited lines producer, surplus lines broker, or managing general agent in this state if they, or any person who owns directly or indirectly more than ten percent of the beneficial interest in a business entity applying for a license, are either a citizen of, resident of, domiciled in, or the commissioner determines that they or the beneficial owner maintain significant assets in, a country that the commissioner determines does not give full faith and credit to any judgment rendered by a court of this state or of the United States, or that the country does not have laws similar to those of this state for the discovery of assets of the insurer, seizure or sale of such assets, and execution of a judgment thereof.~~

~~§1135. Examination~~

~~A. A resident individual applying for an insurance producer license shall pass an examination unless exempt pursuant to R.S. 22:1139. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and regulations of this state. Examinations required by this Section shall be developed and conducted under rules and regulations prescribed by the commissioner of insurance.~~

~~B.(1) After completion and filing of an application with the commissioner of insurance, the commissioner shall subject each applicant for a license as an insurance producer or limited lines producer to an examination.~~

~~(2) If the applicant is a partnership, corporation, or other business entity, the examination shall be taken by each individual who is to be named in or registered on the license for the partnership, corporation, or other business entity and who is engaged in the sale, solicitation, or negotiation of insurance.~~

~~(3) All the lines of insurance which the applicant proposes to transact under the license applied for shall require an examination to be taken.~~

~~(4) The applicant shall pass the examination with a score at or above the seventieth percentile to indicate a satisfactory knowledge and understanding of lines of insurance for which the applicant seeks qualification.~~

~~C. Any person applying for a license as an insurance producer, prior to taking the examination required by this Part, shall file with the Department of Insurance, in a manner prescribed by the commissioner, certification that the applicant has completed a registered prelicensing program certified by the commissioner pursuant to R.S. 22:1191. This Subsection shall not apply to any applicant seeking authorization to write industrial fire, fidelity and surety, vehicle physical damage, title, surplus lines, credit life, credit accident and health, credit property and casualty, or variable annuity insurance business only.~~

~~D. All examinations shall be conducted frequently and at a place or places reasonably accessible to all applicants. The commissioner of insurance may promulgate reasonable rules and regulations providing the procedure for the examinations.~~

~~E. The content of the examination may be outlined in the licensing information handbook provided to applicants by the~~

Department of Insurance, publishers of examination study materials, any precicensing providers, and others wishing to provide this information.

F. The commissioner of insurance may appoint an advisory committee for recommendations as to the scope, type, and quality of examinations, as well as the content of study materials, as provided in R.S. 22:1192.

G. The commissioner may contract, in accordance with R.S. 39:1551 et seq., with one or more private testing services for administering examinations and collecting examination fees. The commissioner may require that the applicant pay the cost of the examination directly to the testing firm.

H. A person who fails to appear for the examination as scheduled, or fails to pass the examination, must reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

§1136. Application for license

A. A person applying for a resident insurance producer license shall make application to the commissioner of insurance on the Uniform Application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:

(1) Is at least eighteen years of age.

(2) Resides in the state or maintains his principal place of business in the state.

~~(3) Is not disqualified for having committed any act that is a ground for denial, suspension, or revocation set forth in R.S. 22:1142.~~

~~(4) Has completed a prelicensing course of study for the lines of authority for which the person has applied.~~

~~(5) Has paid the fees set forth in R.S. 22:1078.~~

~~(6) Has successfully passed the examinations for the lines of authority for which the person has applied.~~

~~(7) When applicable, has the written consent of the commissioner of insurance pursuant to 18 U.S.C. 1033, or any successor statute regulating crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce.~~

~~B.(1) A business entity acting as an insurance producer is required to obtain an insurance producer license. Every member, partner, officer, director, stockholder, and employee of the business entity personally engaged in this state in soliciting or negotiating policies of insurance shall be registered with the Department of Insurance under such business entity's license, and each such member, partner, officer, director, stockholder, or employee shall also qualify as an individual licensee for any line of insurance the business entity is licensed to transact. Licensing of any limited liability company or limited liability partnership as an insurance producer is subject to prior approval of the commissioner of insurance.~~

~~(2) Application shall be made using the Uniform Business Entity Application. Before approving the application, the commissioner of insurance shall find that:~~

~~(a) The business entity has paid the fees set forth in R.S. 22:1078.~~

~~(b) The business entity has designated one or more licensed individual producers responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state.~~

~~(3) The Uniform Business Entity Application shall be accompanied by:~~

~~(a) If a corporation or a limited liability company, a current letter of good standing from the secretary of state's office, verification by the secretary of the corporation that the directors and officers were duly appointed or elected in accordance with the articles of incorporation and bylaws of the corporation, and an attestation by the president of the corporation disclosing the identity and percentage of ownership of all officers and directors, and of those persons who own ten percent or more of the owner applicant as that term is used in the Uniform Business Entity Application.~~

~~(b) If a partnership or a limited liability partnership, a current letter of registration from the secretary of state's office, verification by the appropriate partner that the partners listed on the application are duly named as partners in accordance with the partnership agreement, and a statement under oath verifying the percentage of interest and control of each partner in the partnership.~~

~~(c) If a bank chartered under the laws of this or any state, or of the United States, a current letter of good standing from its chartering authority, verification by the cashier or secretary of the bank that the directors and executive officers were duly appointed or elected in accordance with the articles and bylaws of the bank, and an attestation by the president of the bank disclosing the identity and percentage of ownership of the shareholders who own ten percent or more of the~~

~~bank; such shareholders owning ten percent or more of the shares of the bank shall constitute the owners, and such executive officers shall constitute the officers, as those terms are used in the Uniform Business Entity Application.~~

~~(d) If an association or other business entity, such documentation as the commissioner of insurance may deem necessary and appropriate.~~

~~(e) When completing the background information portion of the Uniform Business Entity Application pertaining to the disclosure of certain lawsuits or arbitration proceedings, corporations, banks, partnerships, or other business entities, and their executive officers and directors, shall disclose those proceedings occurring within the past five years which are considered to be material under generally accepted accounting principles for purposes of financial statement disclosure.~~

~~C. Any professional law corporation formed pursuant to R.S. 12:801 et seq., or any limited liability company, limited liability partnership, or partnership formed for the practice of law, as authorized by R.S. 37:213, may be licensed as a title insurance producer.~~

~~D. The commissioner of insurance may require any documents deemed necessary to verify the information contained in an application.~~

~~E. Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting, or negotiating limited line credit insurance a program of instruction that may be approved by the commissioner of insurance.~~

E. Any license issued pursuant to an application claiming residency for licensing purposes, as defined herein, shall constitute an election of residency in the state, and shall be void if the licensee while maintaining a resident license also maintains a license in, or thereafter submits an application for a license in, any other state or other jurisdiction stating that the applicant is a resident of such other state or jurisdiction, or if the licensee ceases to be a resident of this state.

G. Except as authorized by R.S. 6:242, no bank, bank holding company, or any subsidiary or employee thereof shall be licensed as or engage in any insurance activity as an insurance producer. However, a bank which was engaged as an insurance producer on January 1, 1984, may continue to be so engaged. The commissioner shall license any qualified state or national bank, bank holding company, or any subsidiary or employee thereof to engage in any insurance or annuity activity as authorized by R.S. 6:242, as an insurance producer.

H. In addition to the authority conferred by Subsection G of this Section, or R.S. 6:242, a bank, bank holding company, or any subsidiary or employee thereof shall have and possess, and may exercise, such rights, powers, privileges, and immunities of a national bank or national bank branch engaged in insurance sales activities in this state.

§1137. License

A. Unless denied licensure pursuant to R.S. 22:1142, persons who have met the requirements of this Part shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(1) Life, which provides insurance coverage on human lives, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.

(2) Health and accident, which provides insurance coverage for sickness, bodily injury, or accidental death, and may include benefits for disability income.

(3) Annuities, which includes variable life and variable annuity products.

(4) Property, which provides insurance coverage for the direct or consequential loss or damage to property of every kind. A license for property insurance shall be for either personal lines, defined as property insurance coverage sold to individuals and families for primarily noncommercial purposes, or commercial lines, defined as anything other than personal lines, or both.

(5) Casualty, which provides insurance coverage against legal liability, including that for death, injury or disability, or damage to real or personal property. A license for casualty insurance shall be for either personal lines, defined as casualty insurance coverage sold to individuals and families for primarily noncommercial purposes, or commercial lines, defined as anything other than personal lines, or both.

(6) Title.

(7) Credit life.

(8) Credit health and accident.

(9) Credit property and casualty.

(10) Automobile club service contract and membership.

(11) Travel.

- ~~(12) Baggage.~~
- ~~(13) Industrial life.~~
- ~~(14) Industrial health and accident.~~
- ~~(15) Industrial fire.~~
- ~~(16) Fidelity and surety.~~
- ~~(17) Vehicle physical damage.~~
- ~~(18) Health maintenance organization subscriber agreements.~~
- ~~(19) Bail bonds.~~
- ~~(20) Home service life.~~
- ~~(21) Surplus lines, subject to the requirements of Subsection I of this Section.~~
- ~~(22) Any other line of insurance permitted under state laws or regulations.~~

~~B. Subject to the requirements of Subsection C of this Section, an insurance producer license shall remain in effect, unless revoked, suspended, or denied renewal or reinstatement, as long as all applicable fees are paid and education requirements are satisfied, until the license expires or is surrendered by the holder thereof.~~

~~C.(1) Every licensed producer shall file an application for renewal of his license every two years, by notifying the commissioner of insurance, by methods prescribed by the commissioner, of the licensee's intention to continue his license as either producer, limited lines producer, or surplus lines producer.~~

~~(2) Any licensee who fails to file timely for license renewal shall be charged a late fee of twenty-five dollars, or other such amount as may be authorized by R.S. 22:1078, for each license not renewed timely.~~

(3) Prior to the filing date for application for renewal of a license, the licensee shall comply with continuing education requirements in R.S. 22:1193 for the lines of insurance being renewed. Such producer shall file with the commissioner of insurance, by a method prescribed by the commissioner, satisfactory certification of completion of the continuing education requirements. Any failure to fulfill the continuing education requirements shall result in the expiration of the license. Nothing in this Subsection shall authorize the administration or management, under contract or otherwise, of the continuing education program except by the employees of the department.

D. An insurance producer who allows his or her license to lapse may, within five years from the expiration date of the license, reinstate the same license upon proof of fulfilling all continuing education requirements through the date of reinstatement and upon payment of all fees due. If the license has been lapsed for more than five years, the applicant shall fulfill the requirements for issuance of a new license.

E. A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, such as a long-term medical disability, may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

F. The license shall state the name and mailing address of the licensee, date of issuance, the renewal or expiration date, the line or lines of insurance covered by the license, and such other information as the commissioner of insurance deems necessary.

G. Every licensee shall notify the commissioner, by any means acceptable to the commissioner, of any alteration in his residential, mailing, or business address within ten days of the alteration. Failure to file an address change within the required time shall result in the imposition of a fifty-dollar penalty per violation, or as may be authorized by R.S. 22:1078. Any person against whom a penalty has been levied shall be given due notice of such action. Upon receipt of this notice, the licensee may apply for and shall be entitled to a hearing.

H. A duplicate license may be issued for any lost, stolen, or destroyed license issued pursuant to this Part upon a request by the licensee, by a method prescribed by the commissioner, setting forth the facts of such loss, theft, or destruction, together with a fee of five dollars, or such amount as may be authorized by R.S. 22:1078.

I. Any licensed insurance producer maintaining an office at a designated location in this state, and having at least two years experience in the insurance business with an insurer or as an insurance producer, may be licensed as a surplus lines broker as follows:

(1) The applicant must submit an application to the commissioner of insurance for the license on forms approved by the commissioner.

(2) The applicant must submit the required license fee, as authorized by R.S. 22:1078, for each license year during any part of which the license is in effect. The license shall remain in force until the annual renewal date.

(3) Passage of an examination approved by the commissioner of insurance.

~~J. In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the National Association of Insurance Commissioners (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the commissioner and the nongovernmental entity may deem appropriate.~~

~~K. The commissioner may participate, in whole or in part, with the National Association of Insurance Commissioners (NAIC), or any affiliates or subsidiaries the NAIC oversees, in a centralized producer license registry where insurance producer licenses and appointments may be centrally or simultaneously effected for all states that require an insurance producer license and participate in such centralized producer license registry. If the commissioner finds that participation in such a centralized registry is in the public interest, the commissioner may adopt by rule any uniform standards and procedures as are necessary to participate in the registry. Any participation in a centralized registry shall be under the administration and control of employees of the department and may not be the subject of any contract for services with any person or entity outside of the department.~~

~~§1138. Nonresident licensing~~

~~A. Unless denied licensure pursuant to R.S. 22:1142, a nonresident person shall receive a nonresident producer license if:~~

~~(1) The person is currently licensed as a resident and in good standing in his or her home state.~~

~~(2) The person has submitted the proper request for licensure and has paid the fees required by R.S. 22:1078.~~

~~(3) The person has submitted or transmitted to the commissioner of insurance the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed Uniform Application.~~

~~(4) The person's home state awards nonresident producer licenses to residents of this state on the same basis.~~

~~B.(1) The commissioner of insurance may verify the producer's licensing status through the producer database maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.~~

~~(2) Whenever, by the laws or regulations of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon residents of this state who are nonresident applicants or licensees of such other state or jurisdiction in addition to, or in excess of, those imposed on nonresidents under this Part, the same such requirements shall be imposed upon such residents of such other state or jurisdiction.~~

~~(3)(a) The commissioner of insurance shall not issue a license to any nonresident applicant until such applicant has filed forms approved by the commissioner which designate the commissioner as his true and lawful agent, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of any interested person arising out of the applicant's insurance business in this state. The designation shall constitute an agreement that such service of process has the same legal force and validity as personal service of process upon the person in the state.~~

~~(b) The service of process upon any such licensee in any action or proceeding in any court of competent jurisdiction may be made by a party serving the commissioner of insurance with appropriate copies thereof and the payment to him of a fee of twenty-five dollars, or as may be authorized by R.S. 22:1078.~~

~~(c) The commissioner of insurance shall, within ten days of being served, forward a copy of such process by registered or certified mail, return receipt requested, to the licensee at his last known address of record or principal place of business, and the commissioner shall maintain copies of all such processes so served upon him.~~

~~(4) The service of process upon any such licensee in any action or proceeding instituted by the commissioner of insurance under this Part shall be made by the commissioner by mailing such process by registered or certified mail, return receipt requested, to the licensee at his last known address of record or principal place of business.~~

~~C. A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required.~~

~~D.(1) Notwithstanding any other provision of this Part, an insurance producer licensed as a surplus lines broker in his home state shall receive a nonresident surplus lines broker license pursuant to Subsection A of this Section.~~

~~(2) Except as provided by Subsection A of this Section, nothing in this Section otherwise amends or supersedes any provision of R.S. 22:1249 et seq.~~

E. Notwithstanding any other provision of this Part, a person licensed as a limited line credit insurance or other type of limited lines producer in his home state shall receive a nonresident limited lines producer license, pursuant to Subsection A of this Section, granting the same scope of authority as granted under the license issued by the producer's home state. For the purposes of this Subsection, limited line insurance is any authority granted by the home state which restricts the authority of the licensee to less than the total authority prescribed in the associated major lines pursuant to R.S. 22:1137(A)(1) through (5).

§1139. Exemption from examination

A. An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is available only if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's Producer Database records, maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

B. A person licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence to become a resident licensee pursuant to R.S. 22:1136. No prelicensing education or examination shall be required of that person to obtain any line of authority previously held

~~in the prior state except where the commissioner of insurance determines otherwise by regulation.~~

~~C. The following resident applicants shall be exempt from the requirement of an examination:~~

~~(1) Any applicant for a license covering the same line or lines of insurance for which the applicant was licensed under a similar license in this state, other than a temporary license, within five years from the date of expiration of the previous license, unless such previous license was revoked, suspended, or renewal was refused by the commissioner.~~

~~(2) As to life, health and accident insurance examinations, any applicant who has been conferred the Chartered Life Underwriters (CLU) designation by the American College of Life Underwriters and who is a member in good standing with a local chapter of the American Society of Chartered Life Underwriters.~~

~~(3) As to property and casualty insurance examinations, any applicant who has been conferred the Chartered Property and Casualty Underwriter (CPCU) designation by the American Institute for Property and Liability Underwriters, Incorporated, and who is in good standing with a local chapter of the Society of Chartered Property and Casualty Underwriters.~~

~~(4) Any applicant for a license to represent an industrial life, health and accident, service, nonprofit, or home service insurer.~~

~~(5) Any applicant who shall be licensed to act only as a producer with respect to life, health, and accident insurance on borrowers or debtors, commonly known as credit life or credit health and accident insurance and credit accidental death and dismemberment.~~

~~(6) Any applicant who shall be licensed to act only as a producer with respect to credit property and casualty insurance on collateral, commonly known as credit property and casualty insurance, including credit property insurance on which the licensed lender has a security interest, and involuntary unemployment.~~

~~(7) Any applicant who is a ticket selling agent of a railroad company, carrier by air, or public bus carrier, who shall act thereunder as an insurance producer only in reference to the issuance of accident or baggage insurance policies in connection with the transportation that accompanies the transportation ticket.~~

~~(8) Any applicant who shall be licensed to act only as an automobile club producer to sell a service or membership contract issued by an automobile club.~~

~~(9) Producers of any other lines of insurance which the commissioner of insurance determines, by rule or regulation, do not require the professional competency tested by examination.~~

§1140. Assumed names

A. An insurance producer doing business under any name other than the producer's legal name is required to notify the commissioner of insurance prior to using the assumed name. Prior to the use of or changes to any trade name or names, an insurance producer shall provide written notification of such use or change to the commissioner, on a form prescribed by the commissioner. A letter of registration from the secretary of state shall accompany the application for a trade name.

B. The use by any insurance producer of a nonapproved trade name shall subject such person to a fine not exceeding two hundred fifty dollars. Additionally, if the insurance producer continues to

~~utilize a nonapproved trade name for ten or more days after being notified by the commissioner to cease using the nonapproved trade name, the insurance producer will be subject to an additional fine not to exceed five thousand dollars. If applicable, an insurance producer must comply with the provisions of R.S. 51:281 et seq.~~

§1141. Temporary licensing

A. The commissioner of insurance may issue a temporary insurance producer license for a period not to exceed one hundred eighty days without requiring an examination if the commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

(1) To the surviving spouse or next of kin, or to the administrator or executor or employee of a licensed insurance producer who is deceased, or to the spouse, next of kin, employee, legal guardian, or other court-appointed personal representative of a licensed insurance producer who becomes mentally or physically disabled, to allow adequate time for the sale of the insurance business owned by the producer, or for the recovery or return of the producer to the business, or to provide for the training and licensing of new personnel to operate the producer's business.

(2) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license.

(3) To the designee of a licensed insurance producer entering active service in the armed forces of the United States of America.

(4) In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of this license.

B. The commissioner of insurance may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee, and may impose other similar requirements designed to protect insureds and the public. The commissioner may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business.

C.(1) The authority to act as a home service life insurance producer shall be granted to an applicant by the commissioner for a time period to commence with the date of certified mailing of the license application by the insurer and shall terminate upon the issue or denial of a permanent license. The sponsoring insurer must certify that the applicant will be primarily engaged in the selling and servicing of guaranteed life insurance products on the basis set forth in the home service marketing distribution system as defined in Paragraph (2) of this Subsection. The insurer must have a reasonable expectation that the applicant meets the requirements for licensure set forth in R.S. 22:1136(A). For the purpose of limiting the authority contained herein, a guaranteed life insurance product means a policy in which the premiums, face amount of coverage, and nonforfeiture values, if any, are guaranteed at issue by its provisions.

(2) ~~"Home service marketing distribution system" means a system of marketing insurance products in which fifty percent or more of the premium income is derived from policies of insurance which are sold, serviced, or collected by producers visiting in the home or business of the insured, owner, or premium payor and in which policies are issued on a monthly or more frequent premium payment basis or by single premium payment and in which the producer is charged and debited with the responsibility for collection of the premium payments.~~

~~§1142. License denial, nonrenewal, or revocation~~

~~A. The commissioner of insurance may place on probation, suspend, revoke, or refuse to issue, renew, or reinstate an insurance producer license, or may levy a fine not to exceed five hundred dollars for each violation occurring in this state, up to ten thousand dollars aggregate for all violations in a calendar year per applicant or licensee, or any combination of actions, for any one or more of the following causes:~~

~~(1) The failure to comply with any prerequisite of state or federal law or regulations for the issuance of such license.~~

~~(2) Providing incorrect, misleading, incomplete, or materially false information, or omission of material information, in the license or renewal application.~~

~~(3) The failure to account for or remit any premiums, monies, or properties belonging to another which come into the possession of the applicant in the course of doing insurance business, or improperly withholding, misappropriating, converting, or failing to timely remit any premiums, monies, or properties received in the course of doing~~

~~insurance business, whether such premiums, monies, or properties belonging to policyholders, insurers, beneficiaries, claimants, or others.~~

~~(4) Using fraudulent, coercive, or dishonest practices or misrepresentation, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business, in this state such as might endanger the public.~~

~~(5) Misrepresenting the terms of an actual or proposed insurance contract, binder, rider, plan, or application for insurance, including all forms or documents that are attached, or will be attached, to an actual or proposed insurance contract, binder, rider, plan, or application for insurance.~~

~~(6) Having admitted or been found to have committed any insurance unfair trade practice under R.S. 22:1211 et seq. or fraud under R.S. 22:1214 et seq.~~

~~(7) The conviction or nolo contendere plea to any felony, participation in a pretrial diversion program pursuant to a felony charge, or conviction of any misdemeanor involving moral turpitude or public corruption.~~

~~(8) Obtaining or attempting to obtain a license through misrepresentation or fraud, or improperly using notes or any other reference material to complete an examination for an insurance license, or otherwise cheating or attempting to cheat on an examination for an insurance license of any kind.~~

~~(9) The adjudication of bankruptcy with debts related to the receipt or transmittal of insurance premiums or other funds to an insurer or insured in any fiduciary capacity of the applicant, or issuance~~

~~to the Department of Insurance of an insufficient fund or no-fund check.~~

~~(10) Forging another's name to an application for insurance or to any document related to an insurance transaction.~~

~~(11) Knowingly accepting insurance business from a person who is not licensed as a producer.~~

~~(12) The procurement of a license for the purpose of writing controlled business, as prohibited in this Part.~~

~~(13) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in this or any other state, province, district, or territory.~~

~~(14) The violation of any insurance laws of the United States, this state or any state, province, district, or territory, or violating any lawful rule, regulation, subpoena, or order of the commissioner of insurance or of the insurance officials of another state.~~

~~(15) The refusal to submit physical evidence of identity or the conviction of a felony, in accordance with R.S. 22:1241.1(B) and (C).~~

~~(16) The failure to comply with an administrative or court order imposing a child support obligation.~~

~~(17) The failure to pay state income taxes or comply with any administrative or court order directing payment of state income taxes.~~

~~(18) A producer has employed or has allowed to associate with his business, in any manner, any person engaged in the business of insurance who has been convicted of a felony under the laws of this state or any, the United States, or any foreign country. As used in this Section, business of insurance means the writing of insurance or the reinsuring of risks by an insurance producer or insurer, including all~~

~~acts necessary or incidental to such writing or reinsuring, and the activities of persons who act as, or are, officers, directors, agents, or employees of producers or insurers, or who are other persons authorized to act on behalf of such persons.~~

~~(19) The conviction of a felony involving dishonesty or breach of trust pursuant to 18 U.S.C. 1033 and 1034, without written consent from the commissioner of insurance pursuant to 18 U.S.C. 1033, or any successor statute regulating crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce.~~

~~B. If the commissioner denies any application for a license, the commissioner shall notify the applicant and advise the applicant in writing of the reasons for the denial. Within thirty days of receipt of notification of denial, the applicant may make written demand to the commissioner for a hearing on the matter of denial.~~

~~C. In the event the commissioner suspends or revokes a license, or refuses the renewal or reinstatement of a license, or levies a fine, with or without suspension, revocation, or refusal to renew a license, the commissioner shall notify the licensee in writing of the determination. Any such suspension or revocation of a license, or refusal to renew or reinstate a license, shall include all lines of insurance for which the licensee was authorized. Within thirty days of receipt of notification of denial, the licensee may make written demand to the commissioner for a hearing to seek a reversal of the determination by the commissioner.~~

~~D. The license of a business entity may be suspended or revoked, or renewal or reinstatement thereof may be refused, or a fine may be levied, with or without a suspension, revocation, or refusal to~~

renew a license, if the commissioner finds, after a hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the business entity and the violation was not reported to the Department of Insurance and no corrective action was undertaken timely. Any such suspension or revocation of a license, or refusal to renew or reinstate a license, shall include all lines of insurance for which the licensee was authorized.

E.(1) No licensee whose license has been revoked under this Section shall be entitled to file another application for a license within one year from the effective date of such revocation, or, if judicial review of such revocation is sought, within five years from the date of final court order or decree affirming such revocation. A subsequent application, when filed, may be refused by the commissioner of insurance unless the applicant shows good cause why the revocation of his license should not be deemed a prohibition to the issuance of a new license.

(2) Any license which has been reissued following revocation shall be revoked for a period not to exceed five years upon a second violation by the licensee of any of the provisions of this Section. No licensee whose license has been revoked under this Subsection shall be entitled to file another application for a license within the revocation period. A subsequent application, when filed, may be refused by the commissioner of insurance unless the applicant shows good cause why the revocation of his license should not be deemed a prohibition to the issuance of a new license.

F. The commissioner of insurance shall promptly notify all appointing insurers, where applicable, with copies of such notification sent to the licensee, regarding any suspension, revocation, or termination of license by the commissioner.

G. Upon suspension, revocation, or termination of the license of a resident of this state, the commissioner shall notify the support and services office of the National Association of Insurance Commissioners and the proper insurance official of each state for whom the commissioner has executed a certificate as provided for herein.

H. If the commissioner revokes or suspends any nonresident's license through a proceeding under this Part, he shall promptly notify the appropriate insurance official of the licensee's place of residency of such action and of the particulars thereof.

I. The commissioner of insurance shall retain the authority to enforce the provisions of, and impose any penalty or remedy authorized by, this Part against any person who is under investigation for or charged with a violation of this Part, even if the person's license has been surrendered or has lapsed by operation of law.

J. Without in any way limiting or affecting any other civil or criminal remedies or consequences, any person who intentionally withholds or intentionally fails to timely remit premium payments, or who knowingly converts to his own use or benefit any premiums, monies, or other property belonging to any person or entity who applies for insurance through him, or policyholder, beneficiary, or any other claimant under or relating to any insurance policy, shall be guilty of the crime of theft under R.S. 14:67 if he had the intent to permanently deprive the rightful owner of the premiums, monies, or other property.

~~or the crime of unauthorized use of a movable under R.S. 14:68 if he had no intent to permanently deprive the rightful owner of said premiums, monies, or other property.~~

§1143. Commissions

~~A.(1) An insurer or insurance producer shall not pay, directly or indirectly, any commission, service fee, brokerage, or other valuable consideration to any person or entity for selling, soliciting, or negotiating insurance in this state unless such person or entity holds a valid license as required by law.~~

~~(2) No person or business entity other than a person or business entity duly licensed by the Department of Insurance as an insurance producer shall accept any commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this state.~~

~~(3) Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this state if the person was required to be licensed under this Part at the time of the sale, solicitation, or negotiation and was so licensed at that time.~~

~~B.(1) No member of an insurance advisory committee of any state agency, board, commission, or of any political subdivision of this state, including but not limited to school boards, levee boards, deep water port commissions, deep water port, harbor and terminal districts, and the Louisiana Stadium and Exposition District, shall split, pass on, or share with any insurance producer or other person who is not a member of his own firm or corporation and is not a member of said insurance advisory committee, all or any portion of the commission derived by such committee from the purchase of insurance by such~~

~~state agency, board, commission, or political subdivision of the state without express authorization by official action of such state agency, board, commission, or political subdivision of the state. Any insurance producer or other person who is not a member of such firm or corporation and is not a member of said insurance advisory committee who receives without authorization all or any portion of such commission shall also be in violation of this Subsection.~~

~~(2) Any violator of the provisions of this Subsection shall, upon conviction, be fined not less than one thousand dollars, nor more than five thousand dollars per violation, or imprisoned for not more than two years, or both.~~

~~(3) Any conviction for a violation of the provisions of this Subsection shall constitute grounds for suspension or revocation, by the commissioner of insurance, of the license of such insurance producer, in addition to those grounds of R.S. 22:1142.~~

§1144. Appointments

A.(1) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer, except for surplus lines policies placed through licensed surplus lines brokers, surplus lines policies placed with unauthorized insurers by licensed surplus lines brokers, and workers' compensation policies placed with the Louisiana Workers' Compensation Corporation.

(2) An insurance producer who is not acting as an agent of an authorized insurer is not required to become appointed.

(3) An insurance producer who is duly empowered and authorized to act through or on behalf of another licensed insurance

~~producer in the sale, solicitation, or negotiation of insurance shall not be required to become appointed for the sale, solicitation, or negotiation so conducted.~~

B.(1) An insurer lawfully authorized to transact business in this state shall appoint as its agent any person or persons holding a license issued under the provisions of this Part. To appoint a producer as its agent, the appointing insurer shall file, in a manner prescribed by the commissioner of insurance, a notice of appointment within fifteen days from the date the agency contract is executed. An insurer may also elect to appoint a producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.

(2) Upon receipt of the notice of appointment, the commissioner shall verify within a reasonable time, not to exceed thirty days, that the insurance producer is eligible for appointment. If the producer is determined to be ineligible for appointment, the commissioner shall notify the insurer within fifteen days of such determination.

(3) Each insurer shall submit to the commissioner of insurance, in a manner prescribed by the commissioner, a list of appointed producers which it intends to appoint or reappoint. Each insurer shall remit, in a manner prescribed by the commissioner, appointment fees in the amount set forth in R.S. 22:1078. Any insurer who fails to file its renewal company appointments will be fined ten dollars per license named in its appointment form, or as otherwise authorized by R.S. 22:1078.

(4) An appointment as provided herein shall remain in full force and effect until the following date of recordation, unless the license of

~~the appointed producer named therein is revoked by the commissioner as provided for in this Part, or until canceled by the insurer upon written notice to the producer with a copy thereof filed with the commissioner.~~

~~(5) The duties of the commissioner provided for in this Subsection shall be performed by the commissioner or employees of the department and may not be the subject of any contract for services with any person or entity outside of the department.~~

~~C. Any insurance producer, unless otherwise prohibited by contract, licensed in this state, may solicit, negotiate, or effect applications for policies of insurance with any insurer lawfully doing business in this state, other than an insurer such producer is licensed to represent, if such producer is under contract with such insurer. However, no commissions shall be paid by such company to the producer until such time as notice of recordation of the appointment with respect to such producer has been received by the producer from the commissioner.~~

~~D. If any producer is operating or intends to operate its business affairs as a partnership, corporation, or other business entity, the appointments herein may be issued by an insurer in the name of such partnership, corporation, or other business entity, upon application, to be licensed as an insurance producer under this Part, provided all persons in said partnership, corporation, or other business entity actively engaged in soliciting, negotiating, or effecting contracts of insurance or renewals thereof also hold an unexpired producer's license issued in accordance with the provisions of this Part.~~

§1145. Notification to commissioner of termination

A. An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason not set forth in R.S. 22:1142, shall notify the commissioner of insurance within thirty days following the effective date of the termination, in a manner prescribed by the commissioner, stating the circumstances of the termination. Upon written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

B. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with a producer shall notify the commissioner of insurance within fifteen days following the effective date of the termination, in a manner prescribed by the commissioner, if the reason for termination is one of the reasons set forth in R.S. 22:1142, or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities specified in R.S. 22:1142. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

C. The insurer or the authorized representative of the insurer shall promptly notify the commissioner of insurance, in a manner acceptable to the commissioner, if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner of insurance in accordance with Subsection B had the insurer then known of its existence.

D.(1) Within fifteen days after making any notification required by Subsections A, B, or C, the insurer shall mail a copy of the notification to the producer at his last known address. If the producer is terminated for cause for any of the reasons specified in R.S. 22:1142, the insurer shall provide a copy of the notification to the producer at his last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(2) Within thirty days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under Subsection F.

E.(1) In the absence of actual malice, neither insurer, the authorized representative of the insurer, a producer, the commissioner of insurance, nor any organization of which the commissioner is a member and that compiles the information and makes it available to other state insurance officials or regulatory or law enforcement agencies, shall be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this Section or any information relating to any statement that may be requested in writing by the commissioner, from an insurer or producer; or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to

~~whether a termination for cause under Subsection B of this Section was reported to the commissioner, provided that the propriety of any termination for cause under Subsection B of this Section is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.~~

~~(2) In any action brought against a person or entity that may have immunity under Paragraph (1) of this Subsection for making any statement required by this Section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that Paragraph (1) of this Subsection does not apply because the person making the statement or providing the information did so with actual malice.~~

~~(3) Nothing in this Section shall abrogate or modify any existing statutory privileges or immunities.~~

~~F.(1) Any documents, materials, or other information in the control or possession of the Department of Insurance, furnished by an insurer, producer, or an employee or agent thereof acting on behalf of the insurer or producer, or obtained by the commissioner of insurance in an investigation pursuant to this Section, shall be confidential by law and privileged, shall not be subject to R.S. 44:1 et seq., shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.~~

~~(2) Neither the commissioner of insurance nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Paragraph (1) of this Subsection.~~

~~(3) In order to assist in the performance of the commissioner's duties under this Part, the commissioner:~~

~~(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to Paragraph (1) of this Subsection, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, with the Office of Disciplinary Counsel of the Louisiana State Bar Association, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information.~~

~~(b) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.~~

~~(c) May enter into agreements governing sharing and use of information consistent with this Subsection.~~

~~(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this Section or as a result of sharing as authorized in Paragraph (3) of this Subsection.~~

~~(5) Nothing in this Part shall prohibit the commissioner of insurance from releasing final, adjudicated actions, including for cause terminations that are open to public inspection pursuant to R.S. 44:1 et seq., to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries of the National Association of Insurance Commissioners.~~

~~G. An insurer, the authorized representative of the insurer, or producer that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in an amount not to exceed five thousand dollars per violation. An insurer, the authorized representative of the insurer, or producer that fails to report as required under the provisions of this Section may be fined in an amount not to exceed five thousand dollars per violation.~~

~~§1146. Reciprocity~~

~~A. The commissioner of insurance shall waive any requirements for a nonresident license applicant with a valid license from his home state, except the requirements imposed by R.S. 22:1138, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.~~

B. A nonresident producer's satisfaction of his home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

§1147. Non-reciprocal states or other jurisdictions

Whenever, by the laws or regulations of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon residents of this state who are nonresident applicants or licensees of such other state or jurisdiction in addition to, or in excess of, those imposed on nonresidents under this Part, the same such requirements shall be imposed upon such residents of such other state or jurisdiction. This Section shall not apply to fees, which shall be as authorized by R.S. 22:1078.

§1148. Prohibited acts

A. No insurer or insurance producer shall pay any money or commission or brokerage, or give or allow any valuable consideration or compensation to any person or business entity not duly licensed as an insurance producer, nor to an insurer not licensed to do business in this state, for or because of service rendered or performed in this state in selling, soliciting, negotiating, or effecting a contract of insurance on any property or risks, or insurable interests, or business activities located within or transacted within this state. The prohibition of this Subsection shall not apply with respect to any contract of reinsurance.

B.(1) Whoever violates this Section shall, upon conviction, be fined not less than two thousand dollars, nor more than fifty thousand dollars, or imprisoned with or without hard labor, for not more than three years, or both.

(2) Any conviction for violation of this Section shall constitute grounds for the immediate suspension or revocation by the commissioner of insurance of the license of such insurance producer to sell insurance, in addition to those grounds set forth in R.S. 22:1142.

C.(1) It shall be unlawful for any person or business entity, without conforming to the provisions of this Part, directly or indirectly, to represent himself or itself to be an insurance producer or limited lines producer, or to solicit, negotiate, or effect any contract of insurance or renewal thereof, or to attempt to effect the same on any property, or risk or insurable interests or business activities, located within or transacted within this state. This Subsection shall not apply to:

(a) The clerical duties of office employees not involved in soliciting insurance.

(b) Employees of insurance companies who solicit insurance only for or in conjunction with licensed insurance producers compensated on a commission basis.

(c) The collection of premiums by secretarial or clerical employees of a licensed insurance producer, or other person so authorized by a licensed insurance producer.

(d) Employees of insurance companies who do not solicit insurance but are authorized by their employer to sign policies of insurance.

~~(2) Wherever the commissioner of insurance determines that a violation of Paragraph (1) of this Subsection has occurred, whether that violation be intentional or not, the commissioner or his designee is hereby authorized to issue an order to cease and desist from the violations complained of, and the commissioner is hereby authorized to seek injunctive relief from the district court of the district in which the violation may have occurred or in any proper venue authorized under the Louisiana Code of Civil Procedure.~~

~~D.(1) No person licensed as, or representing himself to be, an insurance producer shall receive anything of value as premium payment or commission for an insurance policy rider, binder, or plan without making a bona fide application to an insurer for an insurance policy.~~

~~(2) No person licensed as, or representing himself to be, an insurance producer shall fail to account for or remit any premiums, monies, or properties belonging to another which come into the possession of the applicant in the course of doing insurance business, or improperly withholding, misappropriating, converting, or failing to timely remit any premiums, monies, or properties received in the course of doing insurance business, whether such premiums, monies, or properties belong to policyholders, insurers, beneficiaries, claimants, or others.~~

~~E.(1) It shall be unlawful for any insurance producer, directly or indirectly, to collect any insurance premium payment, or compensation, or to solicit, negotiate, effect, procure, receive, or forward any contract of insurance or renewal thereof, in relation to any property or risk or insurable interest in this state, for any insurer not lawfully authorized to transact business in this state, or in any manner~~

~~to aid or assist in any such transaction, except through licensed surplus lines brokers.~~

~~(2) Except as hereinafter provided in Paragraph (3) of this Subsection, any person or business entity shall be liable for the full amount of any loss sustained on any contract of insurance made by or through him or it, directly or indirectly, with any insurer not lawfully authorized to transact business in this state, and for any taxes which may become due under any law of this state by reason of such contract. For purposes of this Section, any surplus lines insurer which is approved by the commissioner shall be considered lawfully authorized to transact business in this state.~~

~~(3) Any licensed producer who writes a policy through a licensed surplus lines broker shall not be liable for any losses or taxes as provided for in this Section.~~

~~(4) Any person or business entity found to have violated this Part shall be deemed to have engaged in unfair trade practices and shall be subjected to the penalties provided herein. Additionally, any person found to have knowingly and intentionally violated any provisions of this Subsection shall be guilty of a felony and shall be subjected to a term of imprisonment, with or without hard labor, not to exceed five years, on each count, and each day on which a violation of this Subsection occurs shall be considered a separate violation.~~

~~F. It shall be unlawful for any producer to sign any policy of insurance endorsement in blank.~~

~~G. No insurer transacting casualty, surety, fidelity, guaranty, or bonding insurance and no producer, or representative of such an insurer, shall pay any commission, brokerage fee, or other valuable~~

~~consideration or compensation to any nonresident producer on premiums paid for bonds or insurance executed under the terms or requirements of any contract or agreement with the state of Louisiana or any agency, department, subdivision, unit, commission, parish, municipal corporation, or other political subdivision, unless the nonresident producer has first obtained a countersignature from a resident producer, in which case any commissions shall be split between the nonresident and resident producers on a fair and equitable basis.~~

§1149. Reporting of actions

A. An insurance producer shall report to the commissioner of insurance any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

B. Within thirty days of a conviction in district court of an offense under R.S. 22:1142(A)(7), a producer shall report such conviction to the commissioner and provide a copy of the bill of information or indictment.

C. Without in any way limiting or affecting any other civil or criminal remedies or consequences, any person who intentionally withholds or intentionally fails to timely report information as required by this Section shall be guilty of violating R.S. 22:1142(A)(14).

§1150. Miscellaneous provisions

A.(1) Any insurer which issues or delivers a policy or contract of insurance pursuant to the application or request of a producer or

~~broker who is not authorized to represent said insurer as a producer shall be deemed to have authorized such producer or broker to act on the insurer's behalf. The payment to a producer or broker shall be payment to the insurer with all resultant obligations and duties.~~

~~(2) This Subsection establishes an agency relationship only for the matter of collection of premiums specifically referred to herein.~~

~~B.(1)(a) Any insurance company authorized to transact property or casualty insurance business in this state, or issuing or delivering property or casualty insurance, or fidelity bonds in the state, shall retain information of the producer or agent of record who wrote such policies or bonds for the full term of the contracts, or until the renewal date or termination of the contracts, whichever occurs first. The insurer shall not change or remove such producer or agent, by any producer of record letter or agent of record letter which may be secured by another producer, during the term of such contracts or until the renewal date of the contracts, whichever occurs first, unless the change or removal is requested by an insured under a particular contract. In such case, the insured shall select the new producer of record or agent of record.~~

~~(b) If a change or removal of a producer or agent is requested by an insured, the insurer shall give the producer or agent written notice fifteen days in advance of the change or removal as to the particular insured's contract. If the insurer receives a request to change a producer or agent within the last fifteen days of the policy period, the insurer shall provide the required fifteen-day notice; however, any required change of producer or agent shall be effective on the inception date of the renewal policy. The original producer or agent shall retain the right to commissions for the term of the existing policy. It shall be~~

~~the duty of the insurer to assure that the insured's policy is serviced by a producer or agent after the removal.~~

~~(2) Except as provided in Paragraph (1) of this Subsection, no insurer or producer shall cancel and rewrite any such contracts during the term of such contract or until the renewal date of the contract, whichever occurs first, which would change the producer of record or agent of record.~~

~~(3) This Subsection shall not apply to any producer who is an employee of an insurer or represents, by contractual agreement, only one insurer or a group of affiliated insurers under R.S. 22:1001 et seq.~~

~~(4) Upon the written request of an insured, an insurer shall permit the insured to select another appointed insurance producer due to the termination, death, or retirement of a producer of record or agent of record. Any renewal commission owed to the former producer of record or agent of record shall be paid to the new producer of record or agent of record upon the next renewal of the policy.~~

~~(5) The commissioner of insurance may promulgate rules to enforce the provisions of this Subsection.~~

§1151. Other laws

~~All laws and parts of laws of this state inconsistent with this Part are hereby superseded with respect to matters covered by this Part.~~

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§1212. Definitions

When used in this Part:

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F. "Producer" means a person ~~who solicits, negotiates, effects, procures, delivers, renews, continues, or binds policies of insurance for~~

~~risks residing, located, or to be performed in this state required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, and includes all persons or business entities otherwise referred to in the Louisiana Insurance code as "insurance agent", "agent", "insurance broker", "broker", "insurance solicitor", "solicitor", or "surplus lines broker".~~

Section 2. Part XXIV of Chapter 1 of the Louisiana Revised Statutes of 1950, consisting of R.S. 22:1111 through 1119, is hereby repealed in its entirety.

Section 3. This Act shall become effective on January 1, 2002; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on January 1, 2002, or on the day following such approval by the legislature, whichever is later.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: